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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,879	07/18/2003	Francisco J. V. Hernandez	J&J -2124	5896

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EXAMINER

STEPHENS, JACQUELINE F

- ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/623,879	<b>Applicant(s)</b> HERNANDEZ, FRANCISCO J. V.	
	<b>Examiner</b> Jacqueline F Stephens	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Brasil on 7/19/02. It is noted, however, that applicant has not filed a certified copy of the PI 0202912-0 application as required by 35 U.S.C. 119(b).

### ***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feist et al. USPN 5300054 in view of Yarbrough et al. USPN 5520673.

As to claim 1, Feist discloses an absorbent product comprising an inner sheet 34, an outer sheet 36, and an absorbent core 42. The absorbent core is positioned between the outer and inner sheets and is enveloped by a transfer layer 72 made of an

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absorbent material. The transfer layer comprises a polymeric material (col. 13, lines 25-50 and col. 25, lines 35-39) and has a basis weight of, which is within the claimed range (col. 13, lines 51-55).

Feist does not disclose the transfer layer is treated with a surfactant. Yarbrough discloses treating a polymeric layer used to wrap an absorbent core with a surfactant to minimize the resistance to the penetration of aqueous liquids therethrough (Yarbrough col. 1, lines 37-47). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the transfer layer of Feist with a surfactant for the benefits taught in Yarbrough.

As to claims 2 and 3, see Feist, Figure 9, elements 42 and 72.

As to claim 4, see Feist col. 13, lines 25-28.

As to claims 5, Feist/Yarbrough does not specifically disclose the claimed basis weight. Although Feist as described in col. 13, lines 51-54 and col. 14, lines 11-36 does not give the claimed basis weight, the applicant fails to disclose that the 8-12 g/m<sup>2</sup> is such a critical value or gives unexpected results so to exclude a 17 g/m<sup>2</sup>. Even though Feist/Yarbrough teaches a basis weight of 17 g/m<sup>2</sup> there is not a significant difference in the basis weight values taught by Feist/Yarbrough to suggest Feist/Yarbrough teaches away from the claimed values. Additionally, Feist/Yarbrough teaches the acquisition/distribution layers for the same purpose, to wick fluids. More particularly, "where the general conditions of a claim are disclosed in the prior art, it is not inventive

to discover the optimum or workable ranges by routine experimentation", *In re Aller et al*, 105 USPQ 233.


As to claims 6-8, with respect to the limitation of the percentage of the surfactant in the transfer layer, the specification contains no disclosure of either the critical nature of the claim limitations nor any unexpected results arising therefrom, and that as such the limitations were arbitrary and therefore obvious. "Such unsupported limitations cannot be a basis for patentability, since where patentability is said to be based upon particular dimensions or another variable in the claim, the applicant must show that the chosen variables are critical." *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ 2d 1934 (Fed. Cir. 1990). Feist/Yarbrough teach the concept of a permanent surfactant (Yarbrough col. 1, lines 43-45). One having ordinary skill in the art would be able to determine through routine experimentation the ideal levels of surfactant needed for a particular application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571)272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F Stephens  
Examiner  
Art Unit 3761

February 22, 2005